



**Joshua Chatwin
vs.
Draper City, et al.
Civil No. 2:14-cv-375**

Deposition of: Kenneth R. Wallentine
Date Taken: June 28, 2016

Alpine Court Reporting
Location in Salt Lake City and Provo
801-691-1000

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1 A. Yeah, I should not have worn dark
2 trousers that day.

3 Q. Oh, kidding. And he was very loud, the
4 loudest panting dog I've ever heard, so --

5 A. I'm a former dog handler, yeah, I noticed
6 that, too.

7 Q. Yeah.

8 A. So, yes, I have since stood there.

9 Q. And so you looked through the window from
10 her vantage point?

11 A. Yes, uh-huh.

12 Q. And have you changed your mind about that
13 statement you made in paragraph 6?

14 A. No. If anything, I think it's even more
15 difficult. Because as I looked through the
16 window, I saw that the window -- it wasn't just
17 dirty, it had some hard water stains. Yeah, I
18 continue to think that that -- that the distance
19 and seeing through the window would make it very
20 difficult for anyone to see with great detail at
21 that distance.

22 Q. How far away would you say the window was
23 from where the stand-in was in the driveway? I
24 think somebody had a measuring tape there.

25 A. Somebody had a measuring tape. I held

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1 the end of the tape, but I held the down end that
2 started at zero or one.

3 Q. Would you say it was an average width of
4 a street in the suburbs? Not a main street, but
5 an actual -- like a Sandy or Draper suburb?

6 A. I think that's fair. A newer suburb
7 where we tend to have wider streets. And then, of
8 course, there's an angle, so that increases the
9 distance as well, you know, the distance from the
10 street, the curb and across the sidewalk and her
11 lawn into her house. I'm sorry, I wouldn't feel
12 comfortable in giving you a number, but I would
13 say that it -- the number would be what it is.
14 Somebody did measure it. But I can agree it was
15 an average width street. It's wider than mine and
16 I live in a newer neighborhood, so --

17 Q. When you were looking at the stand-in,
18 could you see him moving through the window?

19 A. I could see that he was moving.

20 Q. Could you see him talking?

21 A. I don't recall whether I could see
22 whether his lips were moving or not.

23 Q. Would you have been able to identify his
24 hair color?

25 A. I wasn't concentrating on that, but I

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1 think that I probably could have. I think I
2 probably could have.

3 Q. His height?

4 A. It's pretty difficult at that kind of
5 distance to accurately -- I mean, my experience
6 with people describing suspects many years of
7 being a cop, a street cop and detective, people
8 who give height estimates from that distance are
9 often wrong.

10 Q. Well, wouldn't you -- he was standing
11 next to a truck.

12 A. Sure.

13 Q. So would you be able to say he was -- if
14 looking through that window, could you say he was
15 taller or shorter than the truck?

16 A. Well, I could say that from my distance.
17 So, you know, being elevated and looking at an
18 angle and the truck being parked on the street
19 level, I could make -- I think I would have been
20 able to make a comparative distance. I have a
21 similar truck, so I could probably come up with a
22 guesstimate if I were back there looking.

23 Q. I just meant -- at this point I'm just
24 asking taller. If you could see the individual
25 being taller or shorter than the truck.

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1 A. Right. I think so.

2 Q. Okay. What about if that individual was
3 in handcuffs? Could you see that?

4 A. I don't know. I don't know. I think
5 that it would be difficult, but I also think it
6 would be possible.

7 Q. What about a bigger movement like if that
8 person that was standing in there put his head
9 back to head-butt? Do you think he would have
10 been able to see that through the hard water
11 stains on the window?

12 A. Well, I don't mean to suggest that the
13 only impediment to accurate perception are the
14 hard water stains. You also have the window
15 itself, lighting conditions, as well as the angle
16 of perception. And it also depends on whether I'm
17 looking -- I mean, I can see much better now, you
18 know, whether I am looking through my bifocal,
19 trifocal, or monofocal vision, my lenses.

20 Q. I'm just asking about you.

21 A. Sure. You're asking about me and I'm
22 just telling you there are a lot of different
23 factors. I think that it's certainly a
24 possibility, but I think it's also possibly I
25 wouldn't.

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1 Q. And you would agree you didn't see any
2 trees or bushes or any mailboxes or anything from
3 your view to the vehicle?

4 A. There were some thorn bushes, but I don't
5 think that they were high enough that they really
6 posed a considerable obstruction to viewing.

7 Q. I know this looks like a lot, but I'm
8 actually almost done. So do you want to take a
9 break?

10 A. I think I'm fine. And, you know, I know
11 that lawyers have a propensity to kill trees.

12 Q. I know.

13 A. It doesn't look like a lot.

14 Q. I know.

15 (Exhibit-3 marked.)

16 BY MS. MARCY:

17 Q. All right. So this is -- 3's the report
18 of expert witness, Trevor Petersen. So if we go
19 forward here, looking at Trevor Petersen's
20 background and qualifications, do you think it
21 sounds like he has a lot of training as a police
22 officer in pretty much all the subjects you get
23 trained in?

24 A. I think so. I actually have some
25 familiarity with Mr. Petersen.

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1 balance and just fallen down?

2 Answer: No.

3 No, he didn't fall down, he was thrown
4 down.

5 Question: So you're positive about that?

6 Answer: That he was thrown down?

7 Question: Yes.

8 Answer: I'm positive he was thrown down,
9 I saw the officer throw him to the ground."

10 Okay. Now, assuming those facts are
11 true, just the way they are, just assuming that
12 Kathy Torrence's version is correct, was the force
13 used on Officer Patterson reasonable given the
14 circumstances?

15 A. You mean the force by Officer Patterson?

16 Q. Uh-huh, yes.

17 A. I'm willing to assume that all of that's
18 correct, but I also -- I mean, you mentioned
19 twice, and I think she actually mentioned more
20 than twice, that she had memory difficulties and
21 that that was chemically induced. At least her
22 perception it was chemically induced.

23 Having studied and experienced and
24 interviewed a number of persons who report similar
25 emotional responses -- physiological responses

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1 accompanying emotional responses, I am confident
2 that it is accurate to say that the actual
3 chemical isn't adrenaline. That doesn't matter.
4 But what one perceives to be adrenaline may well
5 significantly impact the ability not only to
6 perceive but to form a memory.

7 So assuming that all of that is correct
8 and assuming that the circumstances unfolded
9 exactly as she reports them here, whether she
10 could perceive them or not, whether she saw them
11 or not, there's nothing in there to suggest to me
12 that she cannot -- that she can say that
13 Mr. Chatwin did not grasp Officer Patterson's
14 firearm. So assuming all that, no, force was not
15 excessive.

16 Q. Okay. So I want to make sure. My
17 question was not whether she was under anything.
18 Not whether she had issues with seeing. Not
19 whether the light was unclear or anything else.
20 I'm saying assuming that the facts that we just
21 discussed absolutely happened --

22 A. Sure.

23 Q. -- not what Officer Patterson said. I'm
24 just looking for a yes or no. Was the force used
25 by Officer Patterson moving Mr. Chatwin to the

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1 ground reasonable force given the circumstances
2 that we've described today?

3 A. Yes. And in my prior answer, I wasn't
4 trying to add anything to it. But to do exactly
5 what you said, and that's assume that everything
6 is true, including her self reporting of her
7 memory and perception issues.

8 Q. So you're saying, yes, it was reasonable?

9 A. Yes.

10 Q. Okay. When you talk about the -- you
11 said something about she was under the influence
12 of some chemical?

13 A. Yes.

14 Q. What are you talking about?

15 A. I'll give you the short version. What
16 most -- what most people perceive as an adrenaline
17 rush is chemically a response from the amygdala,
18 A-M-Y-G-D-A-L-A -- well, I don't even want a
19 physiology lecture, but it's a chemical response
20 from the brain that diffuses throughout the neural
21 system. And it is a chemical that we think is
22 giving us a rush. It's called an adrenaline rush.
23 But what it does is it alters -- it alters sensory
24 perception and it also alters our ability to form
25 memory. A lot of people think memory is like a

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1 VCR, a camera. You know, we record like a camera.

2 We don't. But that's a chemical reaction.

3 I'm not saying -- I mean, she may have
4 had chemicals that she consumed. And I remember
5 talking about medications. I don't remember if it
6 was here or the day we were at her home. She may
7 have had alcohol that she consumed. She may have
8 had any chemicals -- any number of chemicals.

9 What I'm talking about is she describes here a
10 physiological chemical response, adrenaline. It's
11 actually more adrenaline.

12 Q. But you're not an expert on physiological
13 responses, are you?

14 A. I have testified as an expert on
15 physiological responses to trauma and emotional
16 events in officer-involved shootings. I'm not a
17 doctor. Can't even play one on TV. I'm the dumb
18 one in the family. There are five, soon to be
19 six, doctors in my family. I'm not one of them.
20 But she describes what I have observed, been
21 trained in, and seen to be a chemical response.
22 She calls it a chemical response. She doesn't use
23 the word chemical.

24 Q. So you're not -- but you weren't hired to
25 give opinions about adrenaline and the effects on

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1 the body?

2 A. No. I'm just answering your questions,
3 saying assuming to be true. And assuming as she
4 reports that the adrenaline affected her, I think
5 she's right. It did.

6 Q. Are you planning on testifying at trial
7 about the effects of adrenaline on the body?

8 A. Well, if you ask me a question like that
9 at trial, I'm going to answer the same way.

10 Q. All right. Let's go to -- I think it's
11 7.

12 (Exhibit-7 marked.)

13 BY MS. MARCY:

14 Q. All right. So I've shown you what's been
15 marked for identification purposes as Exhibit 7.

16 A. Patterson's.

17 Q. Right. Patterson's deposition.

18 A. Yes.

19 Q. I'm going to go through some portions of
20 this and ask you a couple questions about it and
21 then I'll be done.

22 A. Okay.

23 Q. All right. So go to page 16.

24 A. I just want to emphasize again, I'm here.

25 You're right, this is your chance. Do not feel